

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Elimination of Rate-of-Return Regulation of)	RM-10822
Incumbent Local Exchange Carriers)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	

COMMENTS OF GVNW CONSULTING, INC.

GVNW Consulting, Inc. (GVNW) respectfully submits its opposition to the petition that has been designated by the Commission as RM-10822. GVNW is a management consulting firm that represents small, rural incumbent local exchange carriers.

The purpose of our opposition is respond to the Commission’s Public Notice requesting comments or oppositions regarding the Western Wireless Corporation (WWC or Western Wireless) petition requesting that the Commission amend its rules to eliminate rate-of-return regulation of incumbent local exchange carriers.

THE PETITION IS AN UNTIMELY FILED DOCUMENT THAT IGNORES OR OMITS CERTAIN KEY FACTS

The petition filed by Western Wireless appears to either be a late-filed opposition to earlier Commission orders (e.g., Rural Task Force (RTF) Order), or a premature piece of advocacy to a future Commission proceeding such as the sequel to the Rural Task Force proceeding¹ that the Commission has already indicated would occur prior to the end of the five year timeframe specified in the RTF Order. This is a somewhat surprising development given the fact that a Western Wireless officer (Gene DeJordy, who is a signatory to this instant petition) was a signatory to the Rural Task Force recommendation to the Federal-State Joint Board.

In its petition, WWC fails to mention one of the key findings of the RTF effort. In its White Paper 2 entitled “The Rural Difference”, the RTF concluded in part that:

There is a substantial rural difference between the operational scope and markets in the approximately 1,300 study areas served by Rural Carriers and their non-Rural Carrier counterparts. These operational and market distinctions underlie sections of the 1996 Act which explicitly apply different regulatory standards to Rural Carriers for universal service, designating eligible telecommunications carriers, interconnection and competitive entry.

If there is one issue that merits interim review, it is the reporting of lines to USAC by competitive eligible telecommunication carriers (CETCs) such as Western Wireless that are reporting more lines in certain areas than the incumbent carrier possesses.

¹ Federal-State Joint Board on Universal Service, Fourteenth Report and Order, 16 FCC Rcd 11244, 11310 (RTF Order)

THE COMMISSION SHOULD DENY THE WESTERN WIRELESS PETITION AND ADDRESS THE ISSUES WITHIN EXISTING COMMISSION TIMEFRAMES AND PROCEEDINGS

The Commission should deny the Western Wireless petition as the Commission has previously established timeframes for reviewing such issues, as noted in the Commission's Rural Task Force Order. Western Wireless is cleverly attempting to change previously agreed to timeframes for prudent public policy review. A careful reading of the WWC petition seems to indicate that WWC is viewing the entire 1996 Act with competition-colored glasses and is choosing to ignore the provisions of section 254 that direct this Commission to establish policies for the preservation and advancement of universal service. Accordingly, the Commission should reject the instant Western Wireless petition as not comporting with the requirements of section 254.

The Commission is also addressing related issues in the upcoming Joint Board Portability Proceeding, as well as in the Further Notice of Proposed Rulemaking that accompanied the Tenth Circuit Remand Order. If WWC is attempting to advocate its position in these proceedings, the Commission should direct WWC to properly file in those proceedings and respect the existing administrative procedures in place at the Commission for an orderly and thorough review of issues.

ANY RURAL CARRIER REGULATORY STRUCTURE SHOULD INCLUDE THE ABILITY TO CONTINUE TO OPERATE UNDER RATE-OF-RETURN REGULATION

The historical public policy approach that allows rural carriers to continue to deploy vital infrastructure under rate-of-return regulation has been one of the key foundational supports of universal service, due to the wide variety of operating characteristics experienced by the many non-price cap rural carriers. As the Commission itself notes previously, the approximately 1,300 non-price cap carriers serve less than eight percent of nationwide access lines. These 1,300 companies exhibit **significant** variations in both study area size and customer base. The nature and scope of these significant differences within the subset of rural carriers has been placed in the public record by the Rural Task Force (RTF) via its White Paper 2, entitled The Rural Difference, released in January, 2000. The White Paper offered a very detailed analysis of the major rural carrier differences. In brief, the analysis led the RTF to reach nine conclusions with respect to the rural difference issue:

- 1) Rural carriers serve more sparsely populated areas;
- 2) There is significant variation in study area sizes and customer bases among rural carriers;
- 3) The isolation of areas served by rural carriers results in numerous operational challenges;
- 4) Compared to non-rural carriers, the customer base of rural carriers generally includes fewer high-volume users, depriving rural carriers of economies of scale;

- 5) Compared to customers of non-rural carriers, customers of rural carriers tend to have a relatively small local calling scope and make proportionately more toll calls;
- 6) Rural carriers frequently have substantially fewer lines per switch than do non-rural carriers, providing fewer customers over which to spread high fixed network costs;
- 7) Total investment in plant per loop is substantially higher for rural carriers than for non-rural carriers;
- 8) Plant specific and operations expenses for rural carriers tend to be substantially higher than for non-rural carriers;
- 9) Customers served by rural carriers have different demographic characteristics from customers in areas served by non-rural carriers.

The regulatory options available to rural rate-of-return carriers should CONTINUE to be structured to reflect these important differences. If the Commission ultimately crafts a workable alternative regulatory option, it must be but one option for the rural carrier. It would need to be an option that could achieve a proper balance between carrier and customer interests, as opposed to a mandated migration away from the rate-of-return system that will continue to assist in meeting the goal of universal service in many portions of rural America

THE COMMISSION ITSELF HAS OUTLINED THE POTENTIAL OF UNDESIRABLE RAMIFICATIONS OF A FORCED CONVERSION AWAY FROM RATE OF RETURN REGULATION

In recent proceedings (e.g., discussion of the MAG incentive proposal), the Commission expressed concern about whether an incentive regulation environment could work in high-cost rural territories.

One concern expressed was whether there would be adequate investment levels in rural areas under an incentive regulatory scenario. The Commission expressed reservations that alternatively-regulated rural carriers might have an “incentive” to reduce costs by reducing investment and expense levels (e.g., depreciation and maintenance) in order to realize greater profits that could then be retained by the company.

A second area of concern is related to the resulting impact on service quality levels. In this regard, the Commission posed the question as to whether state programs may be relied upon as a means to ensure that adequate service quality is maintained.

An integral part of the earlier RTF and MAG decisions was the Commission’s recognition of the differences that exist in rural America. In this regard, GVNW agrees with the Commission’s statement in paragraph 224 of the Second Report and Order:

Rate-of-return regulation has worked well in extending service to rural America, along with our universal service program and the work of state commissions to support service in these areas.

If the Commission intends to continue to meet its universal service responsibility as mandated in section 254, then it must continue to allow rural carriers the option of rate-of-return regulation.

CONCLUSION

The experience of the last several years has shown that the RTF recommendations were based upon a detailed analysis of the geographic areas served, the cost characteristics of the companies providing these services, and the public need for telecommunication services in rural America. During the RTF process, the members of the Task Force, who, even though they represented various industry and regulatory groups, were able to set aside their own self-interests and focus on arriving at difficult compromises that addressed a multitude of very difficult and contentious issues. Without all of the party's willingness to listen, this compromise could never have been achieved. Based on an initial reading, it appears that this instant petition signals that Western Wireless is choosing to ignore these key public policy considerations.

The WWC petition contains unfounded assertions, misplaced conclusions, and ignores extensive data in the CC Docket No. 96-45 record that rural carriers face different circumstances that rate-of-return regulation helps to ameliorate. The Commission should reject the petition.

Respectfully submitted,

/s [Submitted via FCC ECFS system]

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